

# Memorandum



(Public Hearing 03-20-07)

**Date:** December 5, 2006

Agenda Item No. 5(A)

**To:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over the name "George M. Burgess".

**Subject:** Ordinance Approving Issuance of Tax Exempt Notes, Lending of the Proceeds to Performing Arts Center Foundation of Greater Miami and Approving Loan Agreement, County Guaranty and other Related Matters

## **RECOMMENDATION**

It is recommended that the Board enact the accompanying Ordinance (i) approving the issuance by the County of tax exempt notes in an aggregate principal amount not to exceed \$16,000,000 (Tax Exempt Notes) and lending the proceeds to the Performing Arts Center Foundation of Greater Miami (Foundation) in accordance with certain terms and conditions, after a public hearing for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (Code); (ii) approving negotiated sale of Tax Exempt Notes; (iii) approving guaranty by the County of the timely payment of debt service on the Tax Exempt Notes; (iv) approving the form of Loan Agreement (as defined below) and Guaranty Agreement (as defined below); and (v) delegating the authority to the Finance Director to negotiate and finalize all related documents and agreements after consultation with the Office of the County Attorney (County Attorney).

## **BACKGROUND**

The Foundation is a 501(c)(3) corporation organized for the purpose of raising funds to be used to pay a portion of the costs of constructing and operating the Carnival Center for the Performing Arts (Performing Arts Center) owned by the County. The Foundation agreed to contribute \$20,000,000 toward the capital costs of the Performing Arts Center (Commitment) from pledges it has secured for such purpose as part of its fundraising campaign (Foundation Pledges). To date, the Foundation has paid the County \$4,000,000. Since the construction of the Performing Arts Center is complete and it is open for events, the remaining balance of its Commitment (\$16,000,000) is due.

The Foundation received a commitment from SunTrust Bank itself and on behalf of Mercantile Bank (collectively, the Banks) for the funding of the remaining \$16,000,000 which required the County to issue tax exempt notes and lend the proceeds to the Foundation and to guarantee the timely payment of the debt service on the tax exempt notes. The Foundation's loan from the County and the repayment of the County for payments made under the guaranty shall be secured by Foundation Pledges. Pursuant to the commitment from the Banks, the Foundation has requested that the County issue tax exempt notes in an aggregate principal amount of \$16,000,000 (Tax Exempt Notes) and to guarantee their debt service.

The County is authorized pursuant to Chapter 166, Florida Statutes, as amended, and other applicable provisions of law (Act) (i) to issue tax exempt revenue notes for the purpose of lending the proceeds to the Foundation to be used by the Foundation to fulfill its Commitment; (ii) to loan the proceeds from the sale of the revenues notes to the Foundation (Loan); and (iii) to secure the payment of such revenue notes through a loan agreement among the County, the Foundation and the Banks (Loan Agreement). It is in the best interest of the County to issue the Tax Exempt Notes and to guarantee the debt service

Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners  
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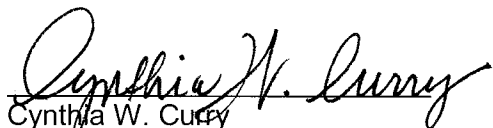
in order to provide a less expensive means for the Foundation to secure the funds necessary to meet its Commitment resulting in additional Foundation revenues being available for other uses related to the Performing Arts Center. The receipt by the County of the balance of the Foundation's Commitment will also allow the County to close out the construction phase of the Performing Arts Center.

The County published a public hearing notice in the Miami Herald more than 14 days in advance of the meeting, at which the public hearing will occur and the Ordinance is considered as required by Section 147(f) of the Code. A copy of the TEFRA Notice is attached to the Ordinance as Appendix I.

The Ordinance approves (i) the issuance by the County of tax exempt notes in the amount of \$16,000,000 (Tax Exempt Note) to be purchased by the Banks in accordance with the terms and conditions set forth in Exhibit "D" to the Loan Agreement; (ii) the Loan to the Foundation; and (iii) the delivery of a County guaranty in favor of the Banks, pursuant to which the County will guarantee the timely payment of debt service on the Tax Exempt Notes through a covenant to budget and appropriate annually from legally available non-ad valorem revenues of the County funds sufficient to pay the debt service in the event Foundation Pledges are insufficient to make the payments due on the Loan (Guaranty). The Ordinance also approves the forms of the Loan Agreement and the Guaranty which are attached to the Ordinance as Appendix II and III, respectively. The Finance Director is also authorized to finalize those documents and to negotiate and finalize any other documents, including the reimbursement agreement between the County and the Foundation required to finalize the financing, after consultation with the Office of the Miami-Dade County Attorney.

The proceeds from the Loan will be used by the Foundation to fund the balance of its Commitment. The Foundation will deliver a promissory note in favor of the County as collateral for the Loan (Promissory Note). Pursuant to the Loan Agreement, the County will assign the Loan Agreement and the Promissory Note to the Banks as collateral for the repayment of the Tax Exempt Notes.

The County and the Foundation will enter into a separate agreement in which the Foundation will agree to reimburse the County for any payments made by the County pursuant to the Guaranty, plus interest on the amount paid at the same rate of interest as the Tax Exempt Note.



Cynthia W. Curry  
Senior Advisor to the County Manager

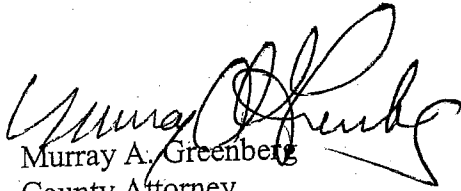


# MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

DATE: March 20, 2007

FROM:   
Murray A. Greenberg  
County Attorney

SUBJECT: Agenda Item No. 5 (A)

Please note any items checked.

\_\_\_\_\_ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

\_\_\_\_\_ 6 weeks required between first reading and public hearing

\_\_\_\_\_ 4 weeks notification to municipal officials required prior to public hearing

\_\_\_\_\_ Decreases revenues or increases expenditures without balancing budget

\_\_\_\_\_ Budget required

\_\_\_\_\_ Statement of fiscal impact required

\_\_\_\_\_ Bid waiver requiring County Manager's written recommendation

\_\_\_\_\_ Ordinance creating a new board requires detailed County Manager's report for public hearing

\_\_\_\_\_ Housekeeping item (no policy decision required)

\_\_\_\_\_ No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 5(A)  
03-20-07

ORDINANCE NO. \_\_\_\_\_

ORDINANCE APPROVING ISSUANCE OF TAX EXEMPT NOTES IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$16,000,000 AND LENDING THE PROCEEDS TO THE PERFORMING ARTS CENTER FOUNDATION OF GREATER MIAMI FOR PURPOSE OF FUNDING CERTAIN CAPITAL COSTS OF THE CARNIVAL CENTER FOR THE PERFORMING ARTS; APPROVING ISSUANCE OF TAX EXEMPT NOTES PURSUANT TO SECTION 147(f) OF INTERNAL REVENUE CODE OF 1986; AUTHORIZING NEGOTIATED SALE OF THE NOTES; APPROVING COUNTY GUARANTY OF SUCH TAX EXEMPT NOTES; APPROVING FORMS OF LOAN AGREEMENT AND GUARANTY; AUTHORIZING FINANCE DIRECTOR WITHIN CERTAIN PARAMETERS TO APPROVE FINAL LOAN AND GUARANTY TERMS AND TO NEGOTIATE AND FINALIZE ANY OTHER RELATED AGREEMENTS; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION WITH SUCH LOAN AND GUARANTY, SEVERABILITY AND EFFECTIVE DATE

WHEREAS, the Performing Arts Center Foundation of Greater Miami ("Foundation") agreed to contribute \$20,000,000 ("Commitment") toward the capital costs of the Carnival Center for the Performing Arts ("Performing Arts Center") owned by Miami-Dade County ("County") from pledges secured by the Foundation as part of its capital campaign in support of the Performing Arts Center ("Foundation Pledges"); and

WHEREAS, the Foundation has paid \$4,000,000 of its Commitment to the County and has received a commitment from two local banks ("Banks") for the funding of the remaining \$16,000,000 which requires the County (i) to issue one or more tax exempt notes and to lend the proceeds to the Foundation and (ii) to guarantee the timely payment of the debt service on the tax exempt notes in the event Foundation Pledges are insufficient to make the payments due on the Foundation Note (defined below); and

WHEREAS, the Foundation has requested that the County (i) issue one or more tax exempt notes in the aggregate principal amount of \$16,000,000 ("Tax Exempt Notes") to be purchased by the Banks in accordance with the terms and conditions set forth in the loan agreement among the County, the Foundation and SunTrust Bank, as representative of itself and Mercantile Bank ("Loan Agreement") and (ii) deliver a guaranty in favor of the Banks of the timely payment of debt service on the Tax Exempt Notes through a covenant to budget and appropriate annually from legally available non-ad valorem revenues of the County funds sufficient to pay such debt service (the "Guaranty"); and

WHEREAS, pursuant to the County's Home Rule Amendment and Charter, its Code and Chapter 166, Florida Statutes, as amended (collectively with the County's Home Rule Amendment Charter and Code, the "Act"), the County is authorized to issue notes such as the Tax Exempt Notes and lend their proceeds to the Foundation for funding qualified projects such as the Performing Arts Center; and

WHEREAS, it is in the best interest of its citizens for the County to assist the Foundation by issuing the Tax Exempt Notes and lending the proceeds to the Foundation pursuant to a Loan Agreement (the "Loan") to meet its Commitment at a lower borrowing cost; and

WHEREAS, the County published a notice of a public hearing in the Miami Herald ("TEFRA Notice") no less than fourteen days prior to the date of the public hearing, a copy of such TEFRA Notice is attached as Appendix I to this Ordinance and is incorporated in this Ordinance, for the purpose of giving all interested persons an opportunity to express their views, either orally or in writing, in connection with the County's proposed issuance of the Tax Exempt Notes, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the

“Code”); and

WHEREAS, such a public hearing was held by this Board on the date this Ordinance was considered; and

WHEREAS, this Board wishes to approve a negotiated sale of the Tax Exempt Notes based on representations of the Foundation that a negotiated sale of the Tax Exempt Notes is necessary due to (i) the present instability in the market for tax-exempt revenue obligations issued on behalf of not-for-profit corporations; (ii) the characteristics of the Tax Exempt Notes and the commitment from the Banks; and (iii) the delay which would result from a sale of the Tax Exempt Notes by competitive bidding; and

WHEREAS, the Board wishes (i) to approve the issuance of the Tax Exempt Notes pursuant to the Bank’s commitment after the public hearing as required by Section 147(f) of the Internal Revenue Code of 1986, as amended; (ii) to approve the form of the Loan Agreement and the Guaranty; and (iii) to delegate to the Finance Director the authority to finalize and execute the Loan Agreement and the Guaranty and to negotiate and finalize any other related agreements after consultation with the Office of the Miami-Dade County Attorney (“County Attorney”), all in accordance with the purposes and conditions outlined in the accompanying County Manager’s memorandum, a copy of which is incorporated in this Ordinance by reference (“County Manager’s Memorandum”),

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Ordinance is enacted pursuant to the Constitution of the State of Florida, the Act and other applicable provisions of law, including Chapter 125, Florida Statutes.

Section 2. The issuance of the Tax Exempt Notes in the principal amount of \$16,000,000 is approved in substantially the form attached as Exhibit “C” to the Loan Agreement. The County, in reliance upon representations presented to the County by the Foundation and the commitment from the Banks, approves a negotiated sale of the Tax Exempt Notes to the Banks. The Tax Exempt Notes are approved after the public hearing as required by Section 147(f) of the Code. The Tax Exempt Notes shall be repaid in accordance with the terms set forth in Exhibit “D” to the Loan Agreement. Interest payments on the Tax Exempt Notes shall be paid on the first day of each month commencing on the first day of the month following the issuance of the Tax Exempt Notes (“Interest Payment Date”) and principal payments shall be paid semi-annually on an Interest Payment Date. All or a portion of the outstanding principal of the Tax Exempt Notes may be prepaid at any time without premium or penalty.

Section 3 The Loan Agreement in substantially the form attached to this Ordinance as Appendix II and the promissory note of the Foundation (“Foundation Note”) in substantially the form attached to the Loan Agreement as Exhibit “B” are approved subject to any changes, amendments or revisions approved by the Finance Director, after consultation with the County Attorney. The Loan secured by the Foundation Note to be repaid from Foundation Pledges is approved. The assignment by the County of the Foundation Note and the Loan Agreement to the Banks as collateral for the Tax Exempt Notes pursuant to the Loan Agreement (“Assignment”) is also approved.

Section 4. The Tax Exempt Notes shall be secured by (i) the Assignment; (ii) an interest payment reserve fund to be funded by the Foundation in the amount of \$400,000 (the “Interest Reserve”) at the time the Tax Exempt Notes are issued; and (iii) the Guaranty. The

Interest Reserve shall be an investment account held by SunTrust Bank. The terms and conditions related to the Interest Reserve shall be set forth in Exhibit "D" to the Loan Agreement. The Finance Director is authorized to approve such terms and conditions after consultation with the County Attorney.

Section 5. The Guaranty in substantially the form attached to this Ordinance as Appendix III is approved subject to any changes, amendments or revisions approved by the Finance Director, after consultation with the County Attorney. Security for the Guaranty shall be a covenant of the County to appropriate in its annual budget, including by amendment, if required, and to pay when due from such appropriation, sufficient amounts of legally available non-ad valorem revenues of the County to satisfy the debt service payments with respect to the Tax Exempt Notes. Such covenant and agreement on the part of the County to budget and appropriate such amounts of legally available non-ad valorem revenues shall be cumulative, and shall continue until such legally available non-ad valorem revenues in amounts sufficient to make all required payments shall have been budgeted, appropriated and actually paid, subject to the limitations set forth in Section 3.05 of the Guaranty.. The Foundation shall reimburse the County, from time to time, for any debt service payments made by the County pursuant to the Guaranty with interest calculated at the same annual interest rate as the Tax Exempt Notes from available Foundation Pledges in accordance with an agreement to be negotiated and approved by the Finance Director after consultation with the County Attorney.

Section 6. The Finance Director is authorized to negotiate and finalize all related agreements after consultation with the County Attorney, including an agreement with the Foundation regarding the reimbursement to the County by the Foundation for any amounts paid



by the County pursuant to the Guaranty Agreement. Such repayment shall be with interest at a rate to be negotiated by the Finance Director but in no event greater than six percent (6%).

Section 7. Nothing in this Ordinance or in the Loan Agreement shall be construed to obligate the County to levy and collect any ad valorem taxes for the payment of its obligations under the Tax Exempt Notes or the Guaranty. The obligations of the County under the Tax Exempt Notes or the Guaranty do not constitute a general indebtedness of the County within the meaning of any constitutional or statutory provision or limitation and no person may compel the County to levy ad valorem taxes for the payment of its obligations pursuant to the Guaranty.

Section 8. The Mayor, County Manager, the Finance Director, Clerk or any other appropriate officers of the County are authorized and directed to execute any and all certificates or other instruments or documents required by this Ordinance, the Loan Agreement or any other document required by the Banks in connection with their purchase of the Tax Exempt Notes after consultation with the County Attorney.

Section 9. If any one or more of the covenants, agreements or provisions contained in this Ordinance shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions of this Ordinance or the Loan.

Section 10. This Ordinance shall become effective ten (10) days after the date of

enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:

Prepared by:

Gerald T. Heffernan

Handwritten signature of Gerald T. Heffernan, consisting of a stylized 'GTH' followed by a large 'H' and a circular flourish.

## **APPENDIX I**

### **NOTICE OF PUBLIC HEARING MIAMI-DADE COUNTY, FLORIDA \$16,000,000 TAX EXEMPT NOTES (PERFORMING ARTS CENTER FOUNDATION OF GREATER MIAMI)**

For purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, and to provide all interested persons an opportunity to express their views, either orally or in writing, or both, on the proposed issuance of the above-referenced Notes, NOTICE IS HEREBY GIVEN that Miami-Dade County, Florida (the "County") will hold a public hearing on \_\_\_\_\_, 2007, beginning at 9:30 A.M., or shortly thereafter, in the County Chambers, Stephen B. Clark Government Center, 111 N.W. 1<sup>st</sup> Street, Miami, Florida 33128, with respect to the proposed issuance of a \$16,000,000 aggregate principal amount Miami-Dade County, Florida Tax Exempt Notes (Performing Arts Center Foundation of Greater Miami) ("Tax Exempt Notes").

The proceeds of the Tax Exempt Notes will be loaned to the Performing Arts Center Foundation of Greater Miami, a Florida not-for-profit corporation (the "Foundation") pursuant to a loan agreement between the County, the Foundation and the purchasers ("Purchasers") of the Tax Exempt Notes ("Loan Agreement"), and used, together with any other available moneys, by the Foundation to satisfy the remaining balance (\$16,000,000) of its \$20,000,000 commitment to fund a portion of the cost of the construction of the Carnival Center for the Performing Arts ("Performing Arts Center") owned by the County and located at \_\_\_\_\_, Miami, Florida. The Performing Arts Center will be operated and managed by the Performing Arts Center Trust of Greater Miami.

The County will deliver a guaranty in favor of the Purchasers in which the County guarantees the timely payment of debt service on the Tax Exempt Notes through a covenant to budget and appropriate annually from legally available non-ad valorem revenues of the County funds sufficient to pay the debt service in the event Foundation pledges are insufficient (the "Guaranty"). Any payments made by the County pursuant to the Guaranty will be reimbursed by the Foundation.

The Tax Exempt Notes and the interest on the Tax Exempt Notes shall not constitute a debt, liability, or obligation of the County (other than its obligations under the Guaranty) or the State of Florida or of any political subdivision of each or a pledge of the faith and credit of the County or the State of Florida or of any such political subdivision, but shall be payable solely from collateral pledged under the Loan Agreement and the Guaranty.

All interested persons are invited to attend and be heard.

NO STENOGRAPHIC RECORD BY A CERTIFIED COURT REPORTER WILL BE MADE OF THE FOREGOING MEETING. ACCORDINGLY, ANY PERSON WHO MAY

SEEK TO APPEAL ANY DECISION INVOLVING THE MATTERS NOTICED HEREIN  
WILL BE RESPONSIBLE FOR MAKING A VERBATIM RECORD OF THE TESTIMONY  
AND EVIDENCE AT THE MEETING UPON WHICH ANY APPEAL IS TO BE BASED.

\_\_\_, 2007

MIAMI-DADE COUNTY, FLORIDA  
Rachel Baum, Finance Director

Appendix II  
Form of Loan Agreement

**Appendix II**

LOAN AGREEMENT

Among

MIAMI-DADE COUNTY, FLORIDA

PERFORMING ARTS CENTER FOUNDATION OF GREATER MIAMI

And

(NAME OF BANK)

Securing

Miami-Dade County's Tax Exempt Revenue Note  
( Performing Arts Center Foundation of Greater Miami )

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Dated as of                      1, 2007

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## LOAN AGREEMENT

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## LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement"), dated as of \_\_\_\_\_, 2007, is among the PERFORMING ARTS CENTER FOUNDATION OF GREATER MIAMI, a Florida [private not-for-profit corporation,] (the "Borrower"), MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County") and (NAME Of BANK), a (the "Purchaser").

## RECITALS

The Borrower is a 501(c)(3) corporation organized for the purpose of raising funds through pledges from individuals and entities to be used to pay a portion of the costs of constructing and operating the Carnival Center for the Performing Arts (the "Performing Arts Center") owned by the County.

The Borrower agreed to contribute \$20,000,000 by a date certain toward the capital costs of the Performing Arts Center ("Commitment") Center from pledges it has secured for such purpose as part of its fundraising campaign ("Foundation Pledges"). To date, the Borrower has paid the County \$4,000,000. Since the construction of the Performing Arts Center is complete and it is open for events, the remaining balance of its Commitment (\$16,000,000) is due.

The Borrower has received a commitment from two local banks ("Banks") for the funding of the remaining \$16,000,000 which requires the County to issue a tax exempt note on behalf of the Performing Arts Center Foundation of Greater Miami (the "Foundation") secured by Foundation Pledges and to guarantee the timely payment of its debt service in the event Foundation Pledges are insufficient when such payment is due.

The County is authorized pursuant to Part II and III, Chapter 159 Florida Statutes, as amended, and other applicable provisions of law (the "Act") (i) to issue a tax exempt revenue note for the purpose of lending the proceeds to the Borrower to be used by the Borrower to fulfill its Commitment; (ii) to loan the proceeds from the sale of the revenue note to the Borrower; and (iii) to secure the payment of such revenue note by this Agreement.

The County has determined that the issuance of a revenue note for such purpose will benefit its citizens by providing a less expensive means for the Borrower to secure the funds necessary to meet its Commitment resulting in additional Foundation revenues not needed for debt service on the tax exempt note being available for other uses related to the Performing Arts Center.

The County has authorized the issuance of its Tax Exempt Revenue Note (Performing Arts Center Foundation of Greater Miami), in an aggregate principal amount not to exceed \$16,000,000 (the "Tax Exempt Note") which Tax Exempt Note will be issued pursuant to the Act and the Purchaser has agreed to purchase the Note from the County at par.

The County will loan the proceeds from the sale of the Note to the Borrower pursuant to this Agreement and a promissory note from the Borrower to the County which will be assigned by the County to the Purchaser pursuant to this Agreement.

The County (the "Guarantor") will deliver simultaneously with the delivery of this Agreement a separate guaranty in substantially the form attached as Exhibit "1" to this Agreement in favor of the Purchaser in which the County will guarantee the timely payment of debt service on the Tax Exempt Note (the "Guaranty").

For consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound by the terms of this Agreement, the parties agree as follows:

## **ARTICLE I. REPRESENTATIONS AND WARRANTIES**

### **Section 1.01. Representations and Warranties of the County.**

The County represents and warrants for the benefit of the Borrower and the Purchaser as follows:

(a) The County is a validly existing political subdivision in good standing under the laws of the State, and has all requisite power to carry on its activities as now conducted and as presently proposed to be conducted, to enter into this Agreement and the Guaranty, and to carry out and consummate all transactions contemplated by this Agreement and the Guaranty.

(b) The execution and delivery of this Agreement and the Guaranty and the performance by the County of its obligations under this Agreement and the Guaranty, (i) have been duly and effectively authorized by all necessary action on the part of the County, and (ii) do not conflict with or result in any breach of any of the material terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any material lien, charge or encumbrance upon any revenues of the County pursuant to any indenture, loan agreement or other agreement or instrument (other than this Agreement and the Guaranty) to which the County is a party.

(c) This Agreement and the Guaranty have been duly authorized, executed and delivered by the County, and this Agreement and the Guaranty are legal, valid and binding obligations of the County.

(d) No event has occurred and no condition exists that, upon execution of this Agreement, would constitute a default pursuant to Article VII of this Agreement.

### **Section 1.02. Representations and Warranties of the Borrower.**

The Borrower represents, covenants and warrants for benefit of the County and the Purchaser, as follows:

(a) The Borrower is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended and is a validly existing and in good standing Florida not-for-profit corporation. The Borrower is authorized under the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations under this Agreement. The Borrower has taken all the corporate action necessary to authorize its officers to execute and deliver this Agreement and upon its execution, this Agreement shall constitute a legal, valid and binding obligation of the Borrower.

(b) The Borrower grants the County a lien on the Foundation Pledges as collateral for the Loan defined below and covenants not to pledge any of the Foundation Pledges including amounts derived from this Agreement for any other purpose without the prior consent of the County and the Purchaser.

(c) The execution and delivery of this Agreement by the Borrower will not result in any material violation of the provisions of the articles of incorporation or by-laws or similar incorporating or governing documents of the Borrower or any material laws, ordinances, governmental rules or regulations or court or other governmental orders to which the County, its properties or operations is subject.

(d) The Borrower has received and reviewed the Guaranty and understands and agrees to its terms and conditions and agrees to reimburse the County for any payments made by the County pursuant to the Guaranty pursuant to a separate agreement between the County and the Foundation.

(e) The Borrower understands and agrees that the County will assign its rights under this Agreement and a fully executed promissory note from the Borrower to the County in substantially the form attached to this Agreement as Exhibit "2" (the "Promissory Note") to the Purchaser to secure the payment of the Tax Exempt Note.

(f) The Performing Arts Center is a qualified project pursuant to the Act.

### **Section 1.03 Representations and Warranties of Purchaser.**

The Purchaser represents, covenants and warrants for the benefit of the County and the Borrower, as follows:

(a) The Purchaser is a validly existing **[bank]** in good standing under the laws of the United States and State of Florida and has duly authorized the purchase of the Tax Exempt Note pursuant to the terms of this Loan Agreement and the Guaranty.

(b) The Purchaser is purchasing the Tax Exempt Note for its own account for investment and has no present intention of reselling or disposing of all or any portion of the Tax

Exempt Note or engaging in any “distribution” as that term is used in the Securities Act of 1933, as amended, and the regulations of the Securities and Exchange Commission thereunder).

## **ARTICLE II.**

### **ISSUANCE OF NOTE; USE OF NOTE PROCEEDS; PAYMENT OF EXPENSES**

#### **Section 2.01 Issuance of the Tax Exempt Note.**

The County shall issue the Tax Exempt Note on behalf of the Foundation and sell it to the Purchaser at a purchase price of par on the same terms and conditions as the loan described in Article IV of this Agreement. The Tax Exempt Note shall be in substantially the form attached to this Agreement as Exhibit “3”.

#### **Section 2.02 Use of Note Proceeds.**

Upon the issuance and delivery of the Tax Exempt Note, an amount equal to its aggregate principal amount shall be loaned by the County to the Borrower. The Borrower authorizes the County to transfer the proceeds directly to the County to be used to reimburse the County for capital costs expended on the construction of the Performing Arts Center or to be deposited in a construction fund held by the County to pay future costs of acquiring and constructing the Performing Arts Center.

#### **Section 2.03 Payment of Expenses.**

The Borrower shall be responsible for all costs associated with the issue and sale of the Tax Exempt Note and this Agreement including reasonable legal fees and expenses incurred by counsel to the County and the Purchaser.

## **ARTICLE III.**

### **SPECIAL COVENANTS**

#### **Section 3.01. Covenants Relating to the Tax Status of the Tax Exempt Note**

(a) The Borrower covenants that it will not take (or fail to take) any action or permit (or fail to permit) any action to be taken on its behalf, or cause or permit any circumstance within its control to arise or continue, if such action or circumstance, or its reasonable expectation on the date of issuance of the Tax Exempt Note, would cause the interest on the Tax Exempt Note to be includable in the gross income of owners thereof for federal income tax purposes.

(b) Without limiting the foregoing, the Borrower covenants that, notwithstanding any other provision of this Agreement or any other instrument, it will neither make nor cause to be made, or permit any investment or other use of the proceeds of the Loan or any property or investment property financed or refinanced thereby, which use would cause any of the Tax Exempt Note to be an "arbitrage bond" under Section 148(a) of the Code, Tax Exempt Note described in paragraph (3) or (4) of Section 149(d) of the Code relating to restrictions on

advance refundings, or "hedge Tax Exempt Note" under Section 149(g) of the Code. The Borrower agrees that it will not make or permit any use of the proceeds of the Tax Exempt Note or the investment proceeds thereof, or the Performing Arts Center, which would cause the interest on the Tax Exempt Note to become includable in the gross income of the Purchaser.

(c) Without limiting the generality of the foregoing, the County and the Borrower hereby agree for the benefit of the owners of the Tax Exempt Note as follows:

(i) that, during the term of this Agreement, and for such period thereafter as may be required by applicable law, the Borrower will fully comply with all effective rules, rulings and regulations promulgated by the Department of the Treasury or the Internal Revenue Service which are applicable to the Tax Exempt Note;

(ii) that the Borrower shall take all action required from time to time to comply with the rebate requirements of Section 148(f) of the Code. The Borrower agrees to provide the Purchaser with a copy of any reports or returns filed with the Internal Revenue Service or the Department of the Treasury pursuant to Section 148(f) of the Code;

(iii) all property acquired with the proceeds of the Tax Exempt Note or any income from the investment of the proceeds will be owned by a 501(c)(3) organization as defined in Section 150(a)(4) of the Code or any "governmental unit" within the meaning of Section 150(a)(2);

(iv) the proceeds of the Tax Exempt Note and the income from its investment will be applied such that the Tax Exempt Note would not be "private activity Tax Exempt Note" within the meaning of Section 141 of the Code if (A) organizations described in Section 501(c)(3) of the Code were treated as governmental units with respect to their activities which do not constitute unrelated trades or business, determined by applying Section 513(a) of the Code, and (B) paragraphs (1) and (2) of Section 141(b) of the Code were applied by substituting five percent for ten percent each place it appears and substituting "net proceeds" for "proceeds" each place it appears;

(v) the amount of the costs of issuance of the Tax Exempt Note financed from proceeds of the Tax Exempt Note will not exceed two percent of the sale proceeds of the Tax Exempt Note;

(vi) the proceeds of the Tax Exempt Note will be applied to the payment of the capital cost of the Performing Arts Center so that the average maturity of the Tax Exempt Note will not exceed 120% of the average reasonably expected economic life of the facilities financed or refinanced with the proceeds of the Tax Exempt Note (determined in the manner provided in Section 147(b) of the Code); and

(vii) none of the proceeds of the Tax Exempt Note will be used to provide any airplane, skybox or other private luxury box, facility primarily used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off-premises.

### **Section 3.02. Limitation of Liability of Members of County.**

No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any member, officer, employee or agent of County in his or her individual capacity, and neither the members of the County nor any officer of the County executing the Tax Exempt Note shall be liable personally on the Tax Exempt Note or be subject to any personal liability or accountability by reason of its issuance. No member, officer, employee or agent of County shall incur any personal liability with respect to any other action taken by him or her pursuant to this Agreement or the Guaranty.

### **Section 3.03. Indemnification Provisions**

(a) It is the intention of the parties that the County and the Purchaser and their respective officers, agents, attorneys and employees shall not incur pecuniary liability by reason of the terms of this Agreement or by reason of the undertakings required of the County or the Purchaser or their officers under this Agreement in connection with the issuance of the Tax Exempt Note, the performance of any act required of the County or the Purchaser or their respective officers by this Agreement, or the performance of any act requested of the County or its officers by the Borrower or in any way arising from the transaction of which this Agreement is part of, including the issuance and sale of the Tax Exempt Note; nevertheless, if the County or the Purchaser or their respective officers, agents, attorneys and employees should incur any such pecuniary liability, then in such event the Borrower shall indemnify and hold the County and the Purchaser and their respective officers, agents, attorneys and employees harmless against all claims by or on behalf of any person arising out of the same, and all reasonable costs and expenses incurred in connection with any such claim or in connection with any action or proceeding, and upon the written request of the County or the Purchaser, the Borrower shall defend the County and the Purchaser and their respective officers, agents, attorneys and employees in any such action or proceeding.

The Borrower may, however, after giving to the County and the Purchaser ten days notice of its intention to do so, at its own expense and in its own name, or in the name of the County, prosecute or defend any action or proceeding or take any other action involving third persons which the Borrower deems necessary or desirable in order to secure or protect any of its rights under this Agreement. Upon receipt by the County of an indemnity or indemnities from the Borrower satisfactory in all respects to the County, the County shall reasonably cooperate with the Borrower and will take all reasonable and necessary action, at the Borrower's sole cost and expense, to effect the substitution of the Borrower for the County in any such action or proceeding if the Borrower shall so request.

(b) The provisions of this Section shall not apply to any claim or liability resulting from the County's or its officers' agents', attorneys' and employees' acts of bad faith,

willful misconduct, fraud or deceit or for any claim or liability which the Borrower has not authorized by the terms of this Agreement or which the Borrower was not given the opportunity to contest, due to the gross negligence of the County.

(c) The provisions of this Section shall not apply to any claim or liability resulting from the Purchaser's, its officers', agents', attorneys' and employees' acts of gross negligence, bad faith, willful misconduct, fraud or deceit or which the Borrower was not given the opportunity to contest, due to the negligence of the Purchaser.

(d) The provisions of this Section shall not apply to any claim or liability resulting from conduct by a member, officer, agent, attorney, or employee of or for the County in his or her individual capacity and not as a member of the County; and

(e) The provisions of this Section shall survive termination of this Agreement.

## **ARTICLE IV. LOAN**

### **Section 4.01. Loan**

The County shall lend the proceeds from the sale of the Tax Exempt Note to the Borrower on the terms set forth in Exhibit "4" to this Agreement (the "Loan"). The Borrower's obligations under this Agreement shall commence on the date of the execution and delivery of this Agreement and the Promissory Note and shall terminate after payment in full of the Loan and all other amounts due under this Agreement and the Tax Exempt Note; provided, however, that the covenants and obligations provided in Sections 3.02, 3.03, and 7.04 shall survive the termination of this Agreement.

### **Section 4.02. Provision for Payment of Loan Payments; Lien on Pledges**

The Borrower shall provide for the repayment of the Loan by making payments of principal and interest calculated in accordance with the interest rate described in the loan terms set forth in Exhibit "4". Payments of principal and interest on the Loan will be made directly to the Purchaser pursuant to Section 6.01 and shall be credited by the Purchaser to the principal and interest due on the Tax Exempt Note. **[monthly, quarterly, semi-annually or annually]** on the first day of the month. Interest payments on the Loan shall be paid on the first day of each month (the "Interest Payment Date") and principal payments shall be paid semi-annually on an Interest Payment Date.

As security for its repayment of the Loan, the Borrower grants to the County and the Purchaser a lien on, and security interest in, the Foundation Pledges until the Loan and the Tax Exempt Note are paid in full.

### **Section 4.03. Obligations Unconditional.**

The Borrower's obligations under this Agreement and the Tax Exempt Note are continuing, unconditional and absolute, and are independent of and separate from any obligations of the County, and shall not be diminished or deferred for any reason whatsoever, irrespective of the doing of any act or the omission of any act by the County or the Purchaser, irrespective of the existence of any other circumstances which might otherwise constitute a legal or equitable defense or discharge of the obligations of the Borrower under this Agreement, including without limitation (i) any matters of abatement, setoff, counterclaim, recoupment, defense or other right the Borrower may have against the County or the Purchaser, suppliers of any portion of the Performing Arts Center or anyone for any reason whatsoever; (ii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Borrower; or (iii) any change in the tax or other laws of the United States of America or of the State of Florida or any political subdivision of either or any failure of the County to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agreement. Nothing contained in this Section shall be construed to release the County from the performance of any of the agreements on its part contained in this Agreement. The Borrower waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time it may acquire be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Agreement except in accordance with the express terms of this Agreement. The parties to this Agreement intend that the payments made pursuant to the Tax Exempt Note shall be paid to the Purchaser on behalf of the Borrower without diminution of any kind.

## **ARTICLE V. OPTION TO PREPAY**

### **Section 5.01. Prepayment of Loan and Tax Exempt Note.**

(a) At the option of the Borrower and after giving at least 45 days written notice by certified or registered mail to the County and the Purchaser (or such lesser period of notice as may be acceptable to the Purchaser), the Borrower may prepay all or a portion of its Loan and the Tax Exempt Note by paying to the Purchaser on any Interest Payment Date the then outstanding principal amount on the Tax Exempt Note and accrued interest calculated to the Interest Payment Date and to the County any other obligations due pursuant to this Agreement and the Guaranty.

(b) Upon prepayment of the full amount of the Loan and the Tax Exempt Note and any other obligations due the County pursuant to this Agreement and the Guaranty as provided for in this Section 5.01, this Agreement shall terminate, except for the obligations and covenants provided in Sections 3.02, 3.03, and 7.04 (which will continue in perpetuity) of this Agreement.



## **ARTICLE VI. ASSIGNMENT**

### **Section 6.01. Assignment by County to Purchaser.**

The County's interest (excluding the County's right to indemnification, fees and expenses) in this Agreement and the Promissory Note, including the right to receive payments required to be made by the Borrower, and to compel or otherwise enforce performance by the Borrower, is assigned to the Purchaser. The Borrower expressly agrees to such assignment, as security for the Tax Exempt Note, and that if any Event of Default shall occur, the Purchaser shall be entitled to act under this Agreement in the place and stead of the County (other than with respect to matters to which the County is entitled to consent).

The Borrower agrees to make the payments due under the Tax Exempt Note directly to the Purchaser or its agent and agrees that, its obligation to make the payments required by the Tax Exempt Note and to observe and perform all other covenants, conditions and agreements under this Agreement shall be absolute and unconditional pursuant to Section 4.03 of this Agreement.

### **Section 6.02. Assignment by County and Purchaser to Third Party.**

The County and the Purchaser have the right to assign their interests in this Agreement and the Promissory Note, in whole or in part, to one or more assignees or sub assignees at any time subsequent to their execution without the necessity of obtaining the written consent of the Borrower.

### **Section 6.03 No Assignment Permitted by Borrower without Consent**

The Borrower shall not assign its interest in this Agreement or the Promissory Note without the prior written consent of the County and the Purchaser.

## **ARTICLE VII. LOAN DEFAULTS AND REMEDIES**

### **Section 7.01. Loan Defaults Defined.**

Each of the following events shall constitute a "Loan Default":

(a) failure by the Borrower or the Guarantor to pay any Loan payment or other payment required to be paid under this Agreement or under the Tax Exempt Note on or before the date on which such payment is due and payable;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement other than the failure referred to in Section 7.01(a) of this Agreement for a period of 30 days after written notice specifying such failure and requesting that it be remedied, is given to the Borrower by the Purchaser, unless the Purchaser shall agree in writing to an extension of such time prior to its

expiration; provided, however, that if the failure stated in the notice is correctable but cannot be corrected within the applicable period, the Borrower and the Purchaser will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until such failure is corrected;

(c) the filing by the Borrower of a petition seeking relief for itself under Title 11 of the United States Code, as now constituted or subsequently amended, or the filing by the Borrower of an answer consenting to, admitting the material allegations of or otherwise not controverting, or the failure of the Borrower to timely controvert, a petition filed against it seeking relief under Title 11 of the United States Code, as now constituted or subsequently amended, or the filing of such petition or answer by the Borrower or the failure of the Borrower to timely controvert such a petition, with respect to relief under the provisions of any other now existing or future applicable bankruptcy, insolvency or other similar law of the United States of America or any state thereof;

(d) the entry of an order for relief, which is not stayed, against the Borrower under Title 11 of the United States Code, as now constituted or subsequently amended, or the entry of an order, judgment or decree by operation of law or by a court having jurisdiction, which is not stayed, adjudging the Borrower a bankrupt or insolvent under, or ordering relief against the Borrower under, or approving as properly filed a petition seeking relief against the Borrower under, the provisions of any other now existing or future applicable bankruptcy or insolvency or other similar law of the United States of America or any of its states, or appointing a receiver, liquidator, assignee, sequestrator, trustee or custodian of the Borrower or all or any of substantial portion of the property of the Borrower, or ordering the reorganization, winding up or liquidation of the affairs of the Borrower, or the expiration of 60 days after the filing of any involuntary petition against the Borrower seeking any of the relief specified in this Section without the petition being dismissed prior to that time;

#### **Section 7.02. Notice of Default.**

The Borrower agrees to give the County and the Purchaser, promptly upon its becoming aware of the its existence, written notice of (i) any action referred to in Section 7.01(c) or 7.01(d) filed by or against the Borrower or (ii) the occurrence of any other event or condition which constitutes, or that with the giving of notice or the passage of time or both will constitute, a Loan Default.

#### **Section 7.03. Remedies.**

Whenever any Loan Default shall have occurred and be continuing, the Purchaser shall, in addition to any other remedies provided in this Agreement or by law, have the right, at its option but with the consent of the Guarantor so long as the Guarantor is not in default under the Guaranty Agreement, without any further demand or notice, to take one or any combination of the following remedial steps:

(a) declare all amounts due under the Tax Exempt Note to be immediately due and payable, and upon written notice to the Borrower the same shall become immediately due and payable without further notice or demand; or

(b) take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due under this Agreement or to enforce any other rights of the Purchaser or the County under this Agreement.

**Section 7.04. Attorney's Fees and Other Expenses.**

The Borrower on demand shall pay to the County or the Purchaser the reasonable fees and expenses of attorneys and other reasonable expenses incurred by either of them in connection with any Loan Default, including, without limitation, fees and expenses incurred in the collection of amounts due under the Tax Exempt Note or any other sum due or the enforcement of performance of any other obligations of the Borrower under this Agreement.

**Section 7.05. No Remedy Exclusive; Waiver; Notice.**

No remedy conferred upon or reserved to the County or the Purchaser is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Loan Default shall impair any such right, remedy or power or shall be construed to be a waiver, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County or the Purchaser to exercise any remedy reserved to it or them in this Article VII, neither the Purchaser nor the County shall be required to give any notice, other than such notice as may be expressly required in this Article VII.

**Section 7.06. Rights of the Guarantor.**

Before the Purchaser may exercise any of the rights granted it pursuant to this Article VII, the Purchaser shall first provide the Guarantor an opportunity to cure any Loan Default and shall not exercise the remedy in Section 7.03 (a) without the prior consent of the Guarantor, provided the Guarantor is not in default under the Guaranty Agreement.

**ARTICLE VIII.**

**MISCELLANEOUS**

**Section 8.01. Notices.**

All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, or sent by registered overnight delivery service, charges prepaid, to the following parties at the following addresses:

County: Miami-Dade County  
111 NW 1st Street, Suite 2550  
Miami, Florida 33128  
Attention: Finance Director

Borrower: Performing Arts Center Foundation of Greater Miami  
1300 Biscayne Boulevard  
Miami, Florida 33132  
Attention: President/Chief Executive Office

Purchaser:

Any of the parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 8.02. Binding Effect.**

This Agreement shall inure to the benefit of and shall be binding upon the Borrower and the County and their respective successors and assigns.

**Section 8.03. Third Party Beneficiary.**

The Guarantor shall be a third party beneficiary of this Agreement.

**Section 8.04. Severability.**

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 8.05. Amendments, Changes and Modifications.**

This Agreement may not be amended unless such amendment shall have been consented to in writing by each of the parties.

**Section 8.06. Counterparts.**

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

**Section 8.07. Applicable Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**Section 8.08. Consents and Approvals.**

Whenever the written consent or approval of the County shall be required under the provisions of this Agreement, such consent or approval may be given by the Finance Director of the County unless otherwise provided by law or by rules or regulations of the County.

**Section 8.09. Captions.**

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 8.10. Disclaimer of Representations.**

Neither the Purchaser nor the County makes any representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the sale of the Tax Exempt Note, or as to the correctness, completeness or accuracy of such statements.

**Section 8.11. WAIVER OF RIGHT TO JURY TRIAL: IF ANY LEGAL ACTION IS TAKEN WITH RESPECT TO THIS LOAN AGREEMENT OR ANY TRANSACTION DESCRIBED IN THIS LOAN AGREEMENT, THE FOUNDATION AND PURCHASER WAIVE THEIR RIGHTS TO TRIAL BY JURY.**

IN WITNESS WHEREOF, the Borrower has executed this Agreement with its seal affixed and attested by its duly authorized officers and the County has caused this Agreement to be executed in its name with its seal affixed and attested by its duly authorized officers and the Purchaser has caused this Agreement to be executed in its name with its seal affixed and attested by its duly authorized officers, all as of the date first above written.

MIAMI-DADE COUNTY, FLORIDA

(SEAL)

By: \_\_\_\_\_

Name:

Title: Finance Director

Attest:

By \_\_\_\_\_  
Deputy Clerk

Approved as to Form and Legal Sufficiency

By: \_\_\_\_\_  
Assistant County Attorney

PERFORMING ARTS CENTER  
FOUNDATION OF GREATER MIAMI

(SEAL)

By: \_\_\_\_\_

Name:

Title:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

(SEAL)

[NAME OF PURCHASER]

ATTEST:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT "1"

Guaranty Agreement



EXHIBIT "2"

Promissory Note

**PROMISSORY NOTE**

\$16,000,000

[date]

**FOR VALUE RECEIVED**, the Performing Arts Center Foundation of Greater Miami, a Florida not-for-profit corporation duly created and validly existing under the laws of the State of Florida ("Foundation"), promises to pay to the order of **MIAMI-DADE COUNTY**, Florida, a political subdivision of the State of Florida, ("County"), the principal sum of SIXTEEN MILLION DOLLARS (\$16,000,000) and to pay interest from the date of the issuance of this Note on the unpaid principal amount of this Note, such principal and interest to be paid at the times, in the amounts and at the interest rates provided in this Note below.

This Note evidences the Foundation's indebtedness to the County under the Loan Agreement ("Loan Agreement") among the Foundation, the County and SunTrust Bank, as representative of itself and Mercantile Bank (collectively, the "Purchaser"), which provides for the issuance by the County of its Tax Exempt Note (Performing Arts Center Foundation) in an aggregate principal amount of \$16,000,000 ("Tax Exempt Note") and for the proceeds of the sale of the Tax Exempt Note to be loaned to the Foundation to be used by the Foundation to fund the balance of its commitment to contribute to the capital costs associated with the Carnival Center of the Performing Arts owned by the County as described in the Loan Agreement. In order to provide a source of payment for and to secure the Tax Exempt Note, the County has assigned in the Loan Agreement to the Purchaser this Note and the Loan Agreement and accordingly, all interest and principal payments due under this Note shall be paid in lawful money of the United States of America to SunTrust Bank, as representative of the Purchaser, at [address] Attention: Corporate Trust Department or such other place as the Purchaser may designate in writing to the County and the Foundation.

The Foundation shall pay or caused to be paid the principal and interest on this Note at the same time and in the same amounts as the principal and interest due on the Tax Exempt Note as more fully described in Exhibit "4" to the Loan Agreement.

Interest shall be computed in accordance with Exhibit "4" of the Loan Agreement and shall be payable on the same terms and conditions as the interest on the Tax Exempt Note, and all of the terms and provisions of the Tax Exempt Note pertaining are incorporated by reference in this Note.

In the case where the date of maturity of interest on or principal of this Note or the date fixed for prepayment of all or a portion of the principal balance of this Note shall be on a Saturday, Sunday or a day on which commercial banks in Miami are authorized by law to close, then payment of principal and interest need not be made on such date but may be made on the next succeeding day on which the commercial bank is open for business with the same force

and effect as if made on the date of maturity, and no interest shall accrue for the period after such date.

The Foundation shall pay the County all other obligations due pursuant to the Loan Agreement.

This Note is subject to prepayment in the same manner as the Tax Exempt Note, and all of the provisions pertaining to prepayment of the Tax Exempt Note are incorporated in this Note by reference.

Upon an occurrence of any Loan Default, as defined in the Loan Agreement, the entire unpaid balance of principal and accrued interest on this Note may, at the options of the County or the Purchaser, as provided in the Loan Agreement, become immediately due and payable in the manner, with the effect and subject to the conditions provided in the Loan Agreement.

This Note is subject to all of the terms and conditions of the Loan Agreement, which is incorporated in this Note by reference, with the same effect as if the Loan Agreement were fully set forth here.

This Note is a non-recourse obligation of the Foundation payable solely from pledges secured by the Foundation as part of its capital campaign in support of the Carnival Center for the Performing Arts owned by Miami-Dade County.

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Foundation shall have no obligation to pay interest or payments in the nature of interest in excess of the maximum rate of interest allowed to be contracted for by law, as changed from time to time, applicable to this Note (the "Maximum Rate"). Any interest in excess of the Maximum Rate paid by Foundation ("Excess Sum") shall be credited as a payment of principal, or, if Foundation so requests in writing, returned to Foundation, or, if the indebtedness and other obligations evidenced by this Note have been paid in full, returned to Foundation together with interest at the same rate as was paid by Foundation during such period. Any Excess Sum credited to Principal shall be credited as of the date paid to the Purchaser. The Maximum Rate varies from time to time and from time to time there may be no specific maximum rate. Purchaser may, without such action constituting a breach of any obligations to Foundation, seek judicial determination of the Maximum Rate of interest, and its obligation to pay or credit any proposed excess sum to Foundation.

The "Default Interest Rate" and, in the event no specific maximum rate is applicable, the Maximum Rate shall be eighteen percent (18%) per annum.

Any payment under this Note or the Loan Documents not paid when due (at maturity, upon acceleration or otherwise) taking into account applicable grace periods shall bear interest at the Default Interest Rate from the due date until paid.

The Foundation (a) expressly waives any valuation and appraisal, presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, all other forms of

notice whatsoever, and diligence in collection; (b) consents that Purchaser may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Foundation or any other person liable for payment of this Note, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agrees that the Purchaser, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Foundation or to attempt to realize on any collateral for this Note.

**BY EXECUTING THIS NOTE, FOUNDATION KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHTS AND THE RIGHTS OF ITS HEIRS, ASSIGNS, SUCCESSORS OR PERSONAL REPRESENTATIVES TO A TRIAL BY JURY, IF ANY, IN ANY ACTION, PROCEEDING OR SUIT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER ASSERTED BY WAY OF COMPLAINT, ANSWER, CROSSCLAIM, COUNTERCLAIM, AFFIRMATIVE DEFENSE OR OTHERWISE, BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS NOTE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT TO BE EXECUTED IN CONNECTION HERewith OR WITH THE INDEBTEDNESS OR THE RENEWAL, MODIFICATION OR EXTENSION OF ANY OF THE FOREGOING OR ANY FUTURE ADVANCE THEREUNDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR PURCHASER'S PURCHASE OF THE TAX EXEMPT NOTE AND NO WAIVER OR LIMITATION OF PURCHASER'S RIGHTS UNDER THIS PROVISION SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON PURCHASER'S BEHALF.**

IN WITNESS WHEREFORE, the Foundation has caused this Note to be executed on the day of       , 20   .

Name of corporation

Corporate Seal

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
[Print Name], President

Exhibit “3”

Form of Tax Exempt Note

Exhibit "4"

Loan Terms

**AMOUNT & PURPOSE OF THE LOAN:** The Loan shall be for a maximum amount of \$16,000,000 and shall be individually evidenced by a promissory note in such amount executed by the Borrower. Proceeds shall be used to finance the repayment of certain debt owed by Borrower to Miami-Dade County in connection with the construction of the Carnival Center for the Performing Arts (the "Project").

**REPAYMENT TERMS:** Payments of interest shall be due monthly. Payments of principal will be due semi-annually. All unpaid principal and accrued interest shall be due at maturity, which shall be the earlier of; 9 years from closing, or September 1, 2015.

The Loan shall be repaid based on the following amortization schedule:

Year 1: \$4,400,000    – Year 2: \$3,800,000    – Year 3: \$2,000,000  
Year 4: \$1,250,000    – Year 5: \$1,050,000    – Year 6: \$850,000  
Year 7: \$850,000      – Year 8: \$900,000      – Year 9: \$900,000

Borrower will be allowed to make additional optional principal payments under the Loan with no pre-payment penalty.

**INTEREST RATE:** The loan shall bear a Tax Exempt Non-Bank Qualified fixed rate.

The indicative Tax Exempt Non-Bank Qualified fixed rate as of November 16, 2006 was 5.05%. It is expected that Borrower will obtain the necessary Non-Bank Qualified tax exempt qualification for this Loan through the Miami-Dade County Industrial Development Authority ("IDA", "the Issuer"). Shall Borrower fail to secure the Non-Bank Qualified tax exempt qualification for the Loan; the Facility shall then bear a taxable rate based on a gross-up factor of 1.3250. Interest at the foregoing rate will be computed on the basis of a 360-day year and shall be calculated for the actual number of days elapsed.

The proposed Tax Exempt Non-Bank Qualified fixed rate which was based on the coupon Treasury bond with a maturity of like term as published in The Wall Street Journal (the "Reference Yield"), may be adjusted. On the funding date the Loan rate will be adjusted upward for each one basis point (.01%) difference between the Reference Yield and the then current yield for U.S. Treasury Bonds with a like term maturity in years (as published in The Wall Street Journal).

[ADD PROVISIONS REGARDING THE INTEREST RESERVE I.E. REPLENISHMENT, INTEREST ETC.

Appendix III  
Form of Guaranty

### **Appendix III**

#### **GUARANTY**

This GUARANTY is made and entered into as of                      1, 2007 (the "Guaranty"), by MIAMI-DADE COUNTY, FLORIDA (the "Guarantor" or the "County"), and SUNTRUST BANK, a national banking association, as representative of itself and Mercantile Bank (collectively, the "Purchaser") under that certain Loan Agreement dated as of                      1, 2007 (the "Loan Agreement") among the County, the Purchaser and the Performing Arts Center Foundation of Greater Miami (the "Foundation");

#### **WITNESSETH**

WHEREAS, the County is issuing a \$16,000,000 Tax Exempt Revenue Note (Performing Arts Center Foundation of Greater Miami) ("Tax Exempt Note") on behalf of the Foundation pursuant to the Loan Agreement that will be purchased by the Purchaser; and

WHEREAS, the proceeds of the sale of the Tax Exempt Note will be loaned to the Foundation pursuant to the Loan Agreement; and

WHEREAS, the Foundation will utilize the proceeds of the Tax Exempt Note to fund the balance (\$16,000,000) of its commitment to contribute \$20,000,000 from pledges secured by the Foundation as part of its capital campaign in support of the Carnival Center for the Performing Arts ("Performing Arts Center") owned by the County ("Foundation Pledges"); and

WHEREAS, the Foundation will grant the County and the Purchaser a lien on the Foundation Pledges pursuant to the Loan Agreement; and

WHEREAS, as a condition of the purchasing the Tax Exempt Note, the Purchaser required the County to guarantee the timely payment of debt service on the Tax Exempt Note; and

WHEREAS, in order to secure funds at a lower rate of interest and to secure the funds necessary to finalize the construction of the Performing Arts, the Guarantor is providing this Guaranty to meet the condition of the Purchaser,

NOW THEREFORE, in consideration of the premises, the Guarantor covenants and agrees as follows:

#### **ARTICLE I**

##### **DEFINITIONS AND USE OF PHRASES**

**SECTION 1.01      DEFINITIONS.** Unless defined in this section or elsewhere in the body of this Guaranty, capitalized terms used in this Guaranty shall have the meanings assigned to them in the Loan Agreement.

“Business Day” shall mean those days in which banks and financial institutions are open for business in Miami, Florida.

“General Fund” shall mean the General Fund of the Guarantor.

“Non Ad Valorem Revenues” shall mean all legally available revenues and taxes of the Guarantor in the General Fund (but not including any other funds or accounts of the Guarantor) derived from any source whatsoever other than ad valorem taxation on real and personal property, including appropriated fund balances in the General Fund and Operating Transfers (In).

“Operating Transfers” shall mean the recurring transfers (In/Out) of the Guarantor which are (from/to) other funds and accounts of the Guarantor which are associated with annual capital and/or operating requirements of the Guarantor.

“Projected Debt Service” shall mean the total of (i) debt service requirements during each of the remaining years until the date of maturity of the Note, (ii) the average annual debt service on the Tax Exempt Note or other debt obligations payable from the Non Ad Valorem Revenues, if any, currently outstanding and (iii) the average annual debt service on the Tax Exempt Note or other debt obligations to be issued, in each case calculated and adjusted as set forth herein.

**SECTION 1.02 USE OF PHRASES; RULES OF CONSTRUCTION.** The following provisions shall be applied wherever appropriate:

Any defined term and any pronoun or pronouns shall be deemed to include both the singular and the plural and to cover all genders.

Unless otherwise provided, any determinations or reports under this Guaranty which require the application of accounting concepts or principles shall be made in accordance with generally accepted accounting principles.

## **ARTICLE II**

### **REPRESENTATION OF GUARANTOR**

**SECTION 2.01 BENEFIT OF GUARANTOR.** The Guarantor represents that the lowering of the cost of borrowing for the Foundation and the payment of the balance of the Foundation’s commitment toward the costs of the Performing Arts Center is expected to result in financial and other valuable benefits to the Guarantor and constitutes good, sufficient and valuable consideration for the assumption by the Guarantor of its obligations under this Guaranty.



**SECTION 2.02 AUTHORIZATION.** The Guarantor represents that it has taken all steps necessary for the valid execution and delivery of this Guaranty and the assumption of the obligations represented hereby.

**SECTION 2.03 ABSENCE OF CONFLICTING AGREEMENTS.** The Guarantor represents that the execution and delivery of this Guaranty and the performance by the Guarantor will not violate any law or regulation by which it is bound or conflict with or constitute a breach of or default under any indenture, loan agreement or instrument or agreement to which the Guarantor is a party.

### **ARTICLE III**

#### **CONVENANTS AND AGREEMENTS; TERM**

**SECTION 3.01 GUARANTEE OF NOTE.** Subject to Section 3.05 of this Guaranty, the Guarantor unconditionally guarantees to the Purchaser, the payment of an amount equal to the principal of, premium if any, and interest on the Tax Exempt Note on any Interest Payment Date. In the event that the Purchaser has not received sufficient payments from the Foundation on any Interest Payment Date, the Purchaser shall submit to the County a written request for payment which payment will be made no later than 10:00 a.m. on the next Business Day.

**SECTION 3.02 GUARANTEE IS ABSOLUTE AND UNCONDITIONAL.** Subject to Section 3.05 of this Guaranty, the obligations of the Guarantor under this Guaranty shall be absolute and unconditional and shall remain in full force and effect until the entire principal of, premium, if any, and interest on the Tax Exempt Note shall have been paid, and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation, any of the following, whether or not with notice to or the consent of, the Guarantor:

- (a) the failure to give notice of the Guarantor of the occurrence of an Loan Default under the terms and provisions of the Loan Agreement;
- (b) the waiver by the Purchaser of the payment, performance or observance by the County, the Foundation or the Guarantor of any of the obligations, covenants or agreements of any of them contained in the Loan Agreement;
- (c) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Loan Agreement;
- (d) the taking or the omission of any of the actions referred to in the Loan Agreement;
- (e) any failure, omission, delay or lack of diligence on the part of the Purchaser to enforce, assert or exercise or the failure or unavailability of any right, power or remedy conferred

on the Purchaser in this Guaranty, or the Loan Agreement or any other act or acts on the part of the Purchaser; or

(f) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, assignment, composition with creditor or other similar proceedings or actions affecting the County, the Foundation or the Purchaser, or any of them or any of their assets.

**SECTION 3.03 NO SET-OFF, ETC.** No set-off, reduction or diminution of any obligation which the Guarantor has or may have against the Purchaser or the Foundation shall be available under this Guaranty to the Guarantor against the Purchaser.

**SECTION 3.04 BENEFIT.** This Guaranty is entered into by the Guarantor for the benefit of the Purchaser and any successor Purchaser or Purchasers, all of whom shall be entitled to enforce performance and observance of this Guaranty to the same extent provided for enforcement of remedies under the Loan Agreement.

**SECTION 3.05 COVENANT TO BUDGET AND APPROPRIATE.** The Guarantor covenants and agrees to appropriate in its annual budget, by amendment, if required and to the extent permitted and in accordance with budgetary procedures provided by the laws of the State of Florida, and to pay when due directly to the Purchaser upon notice in Section 3.01, sufficient amounts of Non Ad Valorem Revenues of the Guarantor to satisfy its obligations under this Guaranty, as the same become due and payable. Such covenant and agreement on the part of the Guarantor to budget and appropriate such amounts of Non Ad Valorem Revenues shall be cumulative, and shall continue until such Non Ad Valorem Revenues in amounts sufficient to make all required payments as and when due shall have been budgeted, appropriated and actually paid into the appropriate fund or account.

Anything in the Guaranty to the contrary notwithstanding, it is understood and agreed that all obligations of the Guarantor shall be payable only from Non Ad Valorem Revenues required to be budgeted and appropriated and nothing in this Guaranty shall be deemed to pledge ad valorem revenues or to permit or constitute a mortgage or lien upon any assets owned by the Guarantor and no person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Guarantor. The obligations under this Guaranty do not constitute general indebtedness of the Guarantor within the meaning of any constitutional, statutory or charter provision or limitation, and the Purchaser not shall have the right to compel the exercise of the ad valorem taxing power of the Guarantor or taxation of any real or personal property for the payment by the Guarantor of its obligations under this Guaranty. Notwithstanding any provision to the contrary, this Guaranty and the obligations of the Guarantor under this Guaranty shall not be construed as a limitation on the ability of the Guarantor to pledge or covenant to pledge or use all or any portion of said Non Ad Valorem Revenues for other legally permissible purposes; provided that Non Ad Valorem Revenues shall be available as required under this Guaranty. Notwithstanding any provisions of this Guaranty or the Loan Agreement to the contrary, the Guarantor shall never be obligated to and the Purchaser may not compel the Guarantor to exercise ad valorem taxing power for any purpose,

including without limitation, to maintain or continue any of the activities or the Guarantor which generate user service charges, regulatory fees or any Non Ad Valorem Revenues.

**SECTION 3.06 ANTI-DILUTION TEST.** The Guarantor may issue bonds, notes or other debt obligations if the amount of Non Ad Valorem Revenues (based on the adopted budget or upon updated Non Ad Valorem Revenue estimates) available to satisfy all principal and interest on the Tax Exempt Note and any other debt service payable there from is at least equal to 100% of the Projected Debt Service, provided that such test may be amended as described in Section 4.01.

(b) Adjustments. The Guarantor may adjust Non Ad Valorem Revenues to include the transfer of additional legally available revenues into the General Fund, for so long as such use has been approved by the Board of County Commissioners of Miami-Dade County, Florida.

(c) Limitation. Notwithstanding any provision hereof, the limitations set forth herein shall not be construed as a limitation on the ability of the Guarantor to issue bonds, notes or other debt obligations in the future if such obligations are payable solely from funds and accounts of the Guarantor other than the General Fund.

(d) Projected Debt Service. Projected debt service with respect to the Tax Exempt Note and with respect to the other bonds, notes or debt obligations currently outstanding and payable from Non Ad Valorem Revenues and with respect to bonds, notes or other debt obligations payable from Non Ad Valorem Revenues to be issued, shall be based upon an assumed substantially level debt service requirement during the remaining term of the Tax Exempt Note or debt service payments on other bonds, notes or debt obligations to be issued (assuming further that the entire principal amount of the Tax Exempt Note or other bonds, notes or debt obligation to be issued will be repaid by the end of such term). For purposes of calculating such debt service schedule, (except with respect to the Tax Exempt Note and the other bonds, notes or debt obligations which bear a fixed interest rate) the rate of interest on such Tax Exempt Note or other debt obligations shall be assumed to be 12% per annum.

## ARTICLE IV

### MISCELLANEOUS

**SECTION 4.01 AMENDMENTS.** This Guaranty shall not be amended, modified or altered unless such modification, alteration or amendment is consented to in writing by the Purchaser.

**SECTION 4.02 GOVERNING LAW.** The laws of the State of Florida shall govern this Guaranty.

**SECTION 4.03 CAPTIONS.** The captions or headings in this Guaranty are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Guaranty.

**SECTION 4.04 SEVERABILITY.** If any provision of this Guaranty shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provisions in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or Sections contained in this Guaranty shall not affect the remaining portions of this Guaranty, or any part thereof.

MIAMI-DADE COUNTY, FLORIDA

(SEAL)

By: \_\_\_\_\_

Name:

Title: Finance Director

Attest:

By \_\_\_\_\_  
Deputy Clerk

Approved as to Form and Legal Sufficiency

By: \_\_\_\_\_  
Assistant County Attorney

[NAME OF PURCHASER]

(SEAL)

By: \_\_\_\_\_

Name:

Title:

ATTEST:

By: \_\_\_\_\_  
Name:  
Title: